

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

KWAITEL JACKSON

PLAINTIFF

v.

CAUSE NO. 4:18CV181-SA-JMV

**CITY OF LELAND, LELAND POLICE DEPARTMENT;
MAYOR KENNY THOMAS, Individually and in his Official
Capacity; CHIEF BILLY BARBER, Individually and in his
Official Capacity; OFFICER COREY WEATHERSPOON,
Individually and in his Official Capacity, and DEFENDANTS
ROBERT L. COMBS, in his Individual and Official Capacity,
and KAYLAN M. JAMES, in his Individual and Official Capacity DEFENDANTS**

**MOTION TO DISMISS FEDERAL CLAIMS AND/OR
GRANT JUDGMENT ON THE PLEADINGS**

NOW COME Defendants, City of Leland, Leland Police Department, Mayor Kenny Thomas, Individually and in his Official Capacity, and Chief Billy Barber, Individually and in his Official Capacity, by and through counsel, and respectfully move this Court for a finding of dismissal and/or judgment on the pleadings as to claims arising under federal law, to-wit:

1) PREMISE: This is a time-barred state court lawsuit where the Plaintiff responded 2 days prior to the scheduled hearing with a statement attempting to raise a federal question. See Discussion Per Order at [Doc 26].

2) STATEMENT REGARDING OMITTED PERSONS AND CLAIMS:

By amended complaint, Plaintiff has deleted the City of Leland Police Department (a non-entity under state or federal law) and claims against Mayor Kenny Thomas in his individual and official capacities and Chief Billy Barber in this individual capacity. The amended complaint maintains a duplicate official capacity claim as to Chief Barber. Since official capacity claims are

actually claims against the City, those are fully and completely answered herein by the City. If not waived herein, dismissal of the duplicate official claims against Chief Barber, Mayor Thomas and the Leland Police Department would be warranted under established precedent. *Estate of Manus v. Webster County*, 2014 U.S. Dist. LEXIS 43536, Pages 7-8 (N.D. Miss. Mar. 31, 2014). In accordance with the Court's Order of April 30, 2019, @ [Doc. 26], an order striking any reference to either the Leland Police Department, Chief Billy Barber, or Mayor Kenny Thomas and directing that they hereafter be listed as terminated on the docket of this case is requested pursuant to Fed. R. Civ. P. 12(e).

3) THOMAS AND BARBER are no longer sued individually. In reliance upon the averments of Plaintiff's First Amended Complaint and the Court's Order of April 30, 2019, @ [Doc. 26], no responsive pleading or prayer for qualified immunity is needed at this point. However, the right to qualified immunity is respectfully reserved.

4) BRIEFING: In accord with Uniform Local Rule 7(b), these Defendants are filing their supporting authorities herewith.

NOW, THEREFORE, these Defendants respectfully move this Court to dismiss the instant Complaint with prejudice pursuant to Rule 12(b)(6) & (c), *Fed. R. Civ. Proc.*

RESPECTFULLY SUBMITTED this the 28th day of May, 2019.

JACKS GRIFFITH LUCIANO, P.A.

By: /s/ Daniel J. Griffith

Daniel J. Griffith, MS Bar No. 8366

Attorney for Defendants City of Leland, Leland Police Department, Mayor Kenny Thomas, Individually and in his Official Capacity, and Chief Billy Barber, Individually and in his Official Capacity

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CERTIFICATE OF SERVICE

I, Daniel J. Griffith, counsel for Defendants, in the above case, do hereby certify that I have this day caused a true and correct copy of the above and foregoing *Motion to Dismiss Federal Claims pursuant to Rules 12(b)(6) & 56, Fed. R. Civ. Proc* to be delivered via ECF filing to all counsel of record.

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FILED this 28th day of May, 2019.

/s/ **Daniel J. Griffith**

Daniel J. Griffith